Supreme Court, U.S.
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No

In The

SUPREME COURT OF THE UNITED STATES

Roger J. LaPlante

Petitioner

v.

James Crosby, Secretary, Florida Department of Corrections
And Charles Crist, Attorney General of Florida

Respondents

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

Roger C. Appell
Attorney for Petitioner
2015 First Avenue North
Birmingham, AL 35203
(205) 252-9462

QUESTIONS PRESENTED FOR REVIEW

1. Whether a state trial court judge may constitutionally close to the public a criminal trial, including exclusion of all the family members of the defendant, based on no facts other than that a six-year old child is about to testify in a case in which the defendant is charged with sexually abusing her?
2. Whether a statement by a prosecutor that she wants the courtroom closed during a criminal trial so a six-year old alleged victim of sexual assault can testify in "relative calm" in the absence of any other showing is a sufficient basis for a state trial court to exclude the public, including all members of defendant's family, during the testimony of the child.
3. Whether where a six-year old alleged victim of sexual abuse testifies in a criminal trial for such abuse state trial court can make findings that comply with the requirements of *Waller v. Georgia*, 467 U.S. 39,104 S.Ct. 2210,81 L.Ed.2d 31 (1984) as pre-condition to a complete closure of the courtroom during the child's testimony based on nothing more than a request by a prosecutor for the closure so

the child can testify in "relative calm" unsupported by any facts other than the age of the witness and the nature of the charges?

LIST OF PARTIES

The parties to this proceeding are listed in the caption.

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TABLE OF CITED AUTHORITIES

Globe Newspaper Co. v. Superior Court of Norfolk County, 457 U.S.596,607, 102 S.CT. 2613,2620, 73L.Ed.2d 248 (1982) *passim*

Waller v. Georgia, 467 u.s. 39,104 S.Ct. 2210,81 L.Ed.2d 31 (1984) *passim*

OPINIONS AND ORDERS ENTERED IN THE CASE

LaPlante v. State, 736 So.2d 1190 (Florida 1999) (Table)

LaPlante v. State, 829 So.2d 216 (Fla. 2d DCA 2000)

THE BASIS OF JURISDICTION

The basis of jurisdiction of this petition in this Court is 28 U.S.C. §§ 1254, 2253, 2254, and Supreme Court Rules 12 through 14.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

FL ST s 918.16

(1) Except as provided in subsection (2), in the trial of any case, civil or criminal, when any person under the age of 16 or any person with mental retardation as defined in s. 393.063 is testifying concerning any sex offense, the court shall clear the courtroom of all persons except parties to the cause and their immediate families or guardians, attorneys and their secretaries, officers of the court, jurors, newspaper reporters or broadcasters, court reporters, and, at the request of the victim, victim or witness advocates designated by the state attorney's office.
(2) When the victim of a sex offense is testifying concerning that offense in any civil or criminal trial,

the court shall clear the courtroom of all persons upon the request of the victim, regardless of the victim's age or mental capacity, except that parties to the cause and their immediate families or guardians, attorneys and their secretaries, officers of the court, jurors, newspaper reporters or broadcasters, court reporters, and, at the request of the victim, victim or witness advocates designated by the state attorney may remain in the courtroom.

Amendment VI, United States Constitution:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

28 U.S.C. 1254

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;
(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding

instructions or require the entire record to be sent up for decision of the entire matter in controversy.

28 U.S.C. 1291

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

28 U.S.C. 2253

(a) In a habeas corpus proceeding or a proceeding under section 2255 before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.
(b) There shall be no right of appeal from a final order in a proceeding to test the validity of a warrant to remove to another district or place for commitment or trial a person charged with a criminal offense against the United States, or to test the validity of such person's detention pending removal proceedings.
(c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from--
(A) the final order in a habeas corpus proceeding in

which the detention complained of arises out of process issued by a State court; or
(B) the final order in a proceeding under section 2255.
(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.
(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

28 U.S.C. 2254

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.
(b)(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that--
(A) the applicant has exhausted the remedies available in the courts of the
State; or
(B)(i) there is an absence of available State corrective process; or
(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.
(2) An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.
(3) A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance

upon the requirement unless the State, through counsel, expressly waives the requirement.
(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.
(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim--
(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.
(e)(1) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.
(2) If the applicant has failed to develop the factual basis of a claim in
State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that--
(A) the claim relies on--
(i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or
(ii) a factual predicate that could not have been

previously discovered through the exercise of due diligence; and

(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

(f) If the applicant challenges the sufficiency of the evidence adduced in such State court proceeding to support the State court's determination of a factual issue made therein, the applicant, if able, shall produce that part of the record pertinent to a determination of the sufficiency of the evidence to support such determination. If the applicant, because of indigency or other reason is unable to produce such part of the record, then the State shall produce such part of the record and the Federal court shall direct the State to do so by order directed to an appropriate State official. If the State cannot

provide such pertinent part of the record, then the court shall determine under the existing facts and circumstances what weight shall be given to the State court's factual determination.

(g) A copy of the official records of the State court, duly certified by the clerk of such court to be a true and correct copy of a finding, judicial opinion, or other reliable written indicia showing such a factual determination by the State court shall be admissible in the Federal court proceeding.

(h) Except as provided in section 408 of the Controlled Substances Act, in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel for an applicant who is or becomes financially unable to afford counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of

counsel under this section shall be governed by section 3006A of title 18.

(i) The ineffectiveness or incompetence of counsel during Federal or State collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under section 2254.

STATEMENT OF THE CASE

The United States District Court for the Middle District of Florida, Tampa Division ("district court") held that Petitioner was not entitled to an evidentiary hearing "as the pertinent facts are fully developed in the record." (App. 4 at 2 n. 1) The following statement of facts is taken from the district court's statement of facts in his order denying the 28 U.S.C. § 2254 Petition on the merits. (App. 4)

Petitioner was charged in the Florida state court, Hillsborough County, by information with one count of sexual battery on a child less than twelve years of age and one count of lewd and lascivious acts in the presence of a child. At the time of trial, the child was six years old. Following a jury trial, Petitioner was convicted of both counts. Petitioner was sentenced on Count 1 to life in prison and on Count Two to a concurrent term of imprisonment of 35 months. (App. 4 at 2)

One of the issues raised on direct appeal was, "The trial court erred in clearing the courtroom of all spectators, including the immediate family of the defendant, before the child who was the alleged victim testified, in violation of the defendant's right to a public trial." (id.) The convictions and sentences were affirmed in a per curiam opinion on May 14, 1999, and Petitioner's motion for rehearing was denied on July 9, 1999. *LaPlante v. State*, 736 So.2d 1190 (Florida 1999) (Table). (id. at 3)